RECEIVED FEDERAL ELECTION COMMISSION FEDERAL ELECTION COMMISSION 1 SECRETARIAT 2 999 E Street, N.W. 3 Washington, D.C. 20463 **2005 MAR** 30 P 2: 40 4 5 FIRST GENERAL COUNSEL'S REPORT **SFIISITIVE** б 04-06 7 Audit Referral: Date Referred: August 18, 2004 8 9 Date Activated: November 8, 2004 10 Statute of Limitations: July 19, 2007 11 12 Internally Generated Audit Referral 13 **SOURCE:** 14 Terrell for Senate and Justin Schmidt, in his official 15 **RESPONDENTS:** capacity as treasurer 16 17 Former assistant treasurer Susan Arceneaux, in her personal capacity 18 19 Otto Candies, L.L.C. 20 Clean Tank, L.L.C. 21 Land-Glo, L.L.C. 22 Sammy Joe Russo 23 Julie N. Murphy 24 John E. Soileau Edward L. Diefenthal 25 26 Carolyn Gilmore 27 M. Maitland Deland 28 Republican Jewish Coalition-Political Action 29 Committee and Matthew Brooks, in his official 30 capacity as treasurer 31 Senate Majority Fund and Ashley Ragan, in her 32 official capacity as treasurer Bluegrass Committee and Larry Steinberg, in his 33 34 official capacity as treasurer Good Government for America PAC and Melinda 35 Anderson, in her official capacity as treasurer 36 37 America's Foundation fka Fight PAC, and Barbara 38 Bonfiglio, in her official capacity as treasurer 39 Defend America PAC and John Lloyd, in his 40 official capacity as treasurer Republican Majority Fund and Barbara Bonfiglio 41 in her official capacity as treasurer 42 Volunteer PAC and Dawn Perkerson. 43 in her official capacity as treasurer 44 45 The Carthage Partners, L.C.

Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P.

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Oncologics

2		Suzanne Haik Terrell
3		First Bank and Trust
4		
5	RELEVANT STATUTES	
6	AND REGULATIONS:	
7		2 U.S.C. §§ 431(8)(A)(i) and (B)(vii)
8		2 U.S.C. § 431(13)
9		2 U.S.C. § 432(e)(2)
10		2 U.S.C. § 432(i)
11		2 U.S.C. § 434(a)(6)
12		2 U.S.C. §§ 434(b)(1), (2), (3), and (4)
13		2 U.S.C. §§ 441a(a)(1)(A) and (2)(A)
14		2 U.S.C. § 441a(f)
15		2 U.S.C. § 441b(a)
16		11 C.F.R. §§ 100.7(a)(1), 100.7(b)(11), and 100.12
17		11 C.F.R. § 102.17(c)(8)(i)(B)
18		11 C.F.R. § 103.3(b)
19		11 C.F.R. §§ 104.3(a)(4), 104.5(f), and 104.7(b)
20		11 C.F.R. §§ 110.1(a), (b), (e), and (g)
21		11 C.F.R. § 110.2(b)
22		11 C.F.R. § 110.9
23		11 C.F.R. § 114.2(d)
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25	INTERNAL REPORTS CHECKED:	Audit Documents
26		Disclosure Reports
27		
28	FEDERAL AGENCIES CHECKED:	None
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30	L <u>INTRODUCTION</u>	
31	This matter is based on an audit o	f Terrell for Senate ("the Committee"), which was
32	conducted by the Audit Division of the R	ederal Election Commission ("the Commission")
33	pursuant to 2 U.S.C. § 438(b). See Final	Audit Report (approved by the Commission on

August 4, 2004). The audit covered the period from July 19, 2002 through December 31, 2002.²

¹ Suzanne Haik Terrell was a candidate for the U.S. Senate from Louisiana in 2002.

² The facts relevant to this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, the activity prior to BCRA is subject to the provisions of the Act as it existed at that time and the activity after BCRA is subject to the Act as amended by BCRA. However, the statutory provisions and Commission regulations at issue were not amended by BCRA in a manner relevant to the activity in this matter.

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- 1 Based on the information set forth in the Final Audit Report, this Office recommends that the
- 2 Commission find reason to believe that the Committee and Justin Schmidt, in his official
- 3 capacity as treasurer:
- Violated 2 U.S.C. § 441b(a) by knowingly accepting 65 corporate contributions totaling \$64.600. (Attachment 1 at pp. 8-10).
 - Violated 2 U.S.C. § 441a(f) by knowingly accepting 541 contributions in excess of the limitations of the Federal Election Campaign Act of 1971, as amended ("the Act"), totaling \$552,773.³ (Attachment 1 at pp. 10-13).
 - Violated 2 U.S.C. § 441b(a) by knowingly accepting \$100,000 from the proceeds
 of an unsecured bank loan. (Attachment 1 at pp. 13-14).
 - Violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.3(a) and (b) by understating total receipts by \$693,576 and total disbursements by \$960,876, and overstating cash on hand by \$281,800. (Attachment 1 at pp. 14-16).
 - Violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i) by failing to itemize all of the contributions from individuals. (Attachment 1 at pp. 16-17).
 - Violated 2 U.S.C. § 434(b)(3)(B) and 11 C.F.R. § 104.3(a)(4)(ii) by failing to itemize 80 contributions from political committees totaling \$134,597.
 (Attachment 1 at p. 17).
 - Violated 2 U.S.C. § 434(b)(2)(F) and 11 C.F.R. §§ 102.17(c)(8)(i)(B) and
 104.3(a)(4) by failing to disclose and itemize \$302,000 in proceeds from joint

³ The Committee, in its post-general election fundraising solicitations, informed individual contributors they could contribute \$1,000 for the primary election debt, \$1,000 for the general election debt, and \$1,000 for the runoff election. The fundraising solicitations also informed political committee contributors they could contribute \$5,000 for the primary election debt, \$5,000 for the general election debt, and \$5,000 for the runoff election. The Committee, however, did not have net debts outstanding from the primary election and it did not have enough general election debts for these excessive contributions.

fundraising activity, and by failing to itemize its share of the gross receipts as
contributions from the original contributors as required on memo Schedules A for
any of the \$420,500 in transfers of joint fundraising proceeds. (Attachment 1 at
p. 18).

- Violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i) by failing to disclose the occupation and name of employer for 1,173 contributions from individual contributors totaling \$812,585, and also failed to demonstrate that best efforts were made to obtain, maintain, and submit the missing information.

 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7(b). (Attachment 1 at pp. 19-20).
- Violated 2 U.S.C. § 434(a)(6) and 11 C.F.R. § 104.5(f) by failing to file 48-hour
 notices for 77 contributions totaling \$106,100. (Attachment 1 at pp. 20-21).

II. ADDITIONAL RESPONDENTS

A. Susan Arceneaux

We recommend that the Commission find reason to believe that former assistant treasurer Susan Arceneaux, in her personal capacity, violated the same provisions of the Act and regulations as the Committee. It is reasonable to infer, considering the circumstances outlined below and the sheer number of excessive and prohibited contributions and other specific instances of apparent violations, that she recklessly failed to fulfill the duties imposed on treasurers by provisions of the Act and the Commission's regulations. Specifically:

⁴ There is insufficient information on which to base a recommendation that the Commission find reason to believe that the Committee's former treasurer, Clifton W. Newlin, who was treasurer during the time the apparent violations occurred, violated the Act, particularly in light of the fact that the assistant treasurer actually carried out the duties of treasurer.

- Arceneaux, who was an employee of Political Compliance Services, Inc., a
 company that specializes in Federal Election Commission compliance services,⁵
 received copies of the contribution checks, and prepared and signed all of the
 Committee's disclosure reports during the 2002 election cycle.
 - Eighteen of the contributor checks this Office reviewed were from corporations, as the name and address fields on the face of the checks indicated that these checks were drawn on corporate accounts. Other checks, in which the name and address fields on the face of the checks denoted that they were from Limited Liability Companies ("LLCs"), also appeared to be illegal because the LLCs at issue elected to be treated as corporations by the Internal Revenue Service.⁶
- The disclosure reports included such a large number of excessive contributions
 from individuals and political committees so as to suggest a lack of attention by
 Arceneaux. Notably, the Final Audit Report concluded there were 541 excessive
 contributions totaling \$552,773. See Attachment 1 at pp. 9-12.
- Had Arceneaux reviewed the bank loan documents, which were made available to the Commission's auditors, she would have seen that the loan was unsecured.
- While Arceneaux filed some 48-hour notices, she failed to file 48-hour notices for
 77 contributions totaling \$106,100, a significant number considering that she is a
 professional compliance consultant.

⁵ See http://www.politicalcompliance.com. The Committee paid Political Compliance Services, Inc. for Arceneaux's services.

Arceneaux apparently made no effort to verify the legal status of those contributions. During the audit process, the Committee's attorney sent letters to apparent corporate contributors asking for information regarding the contributor's corporate status. The Committee, in its amended 2002 Year-End Report, acknowledged that all of the LLCs at issue made corporate contributions. See Amended 2002 Year-End Report (August 18, 2004).

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1	•	Arceneaux filed disclosure reports that were materially deficient in terms of
2		accurately disclosing financial activity and providing complete itemization of
3		contributions.

B. Corporate Contributors

Forty-five LLCs and corporate entities apparently made 65 prohibited contributions to the Committee totaling \$64,600. Forty-two of those contributors made less than \$4,000 in contributions. Three LLCs contributed \$4,000 or more: Otto Candies, L.L.C. (\$19,000); Clean Tank, L.L.C. (\$8,000); and Land-Glo, L.L.C. (\$4,000). In order to focus the case and the Commission's resources on the most egregious conduct, this Office recommends that the Commission exercise its prosecutorial discretion to pursue only these three corporate contributors. We are not recommending that the Commission take action against the 42 corporate contributors who contributed less than \$4,000. Therefore, this Office recommends that the Commission find reason to believe that Otto Candies, L.L.C.; Clean Tank, L.L.C.; and Land-Glo, L.L.C., violated 2 U.S.C. § 441b(a).

The Audit Referral states that there were 47 LLCs and corporate entities that made prohibited contributions. However, based on the Audit staff's work papers, it appears that there were 45 LLCs and corporate entities that made prohibited contributions.

See note 6 supra.

The names of these corporate contributors and the amounts of their contributions were not included in the Audit Referral or the Final Audit Report. That information was contained in the Audit staff's work papers. The Audit staff's work papers also included Otto Candies, L.L.C.'s response to the Committee's attorney's inquiry verifying its status as a corporation for Internal Revenue Service purposes. See note 6, supra. Although we do not have similar verification of Clean Tank, L.L.C.'s and Land-Glo, L.L.C.'s corporate status, the Committee, in its amended 2002 Year-End Report, acknowledged that Clean Tank, L.L.C. and Land-Glo, L.L.C. made corporate contributions. Id.

C.	Individuals Who Made Excessive Contributions
~	Tindialaring and interestry contributions

- 2 More than three hundred individual contributors apparently made excessive
- 3 contributions. 10 In order to focus the case and the Commission's resources on the most
- 4 egregious conduct, this Office recommends that the Commission exercise its prosecutorial
- 5 discretion to pursue only the six contributors identified below, each of whom contributed more
- 6 than twice the per election contribution limit and whose contributions were \$3,000 or more over
- 7 the limit. 11

- Sammy Joe Russo, whose contributions exceeded the limit by \$13,000.
- Julie N. Murphy, whose contributions exceeded the limit by \$5,000.
- John E. Soileau, whose contributions exceeded the limit by \$4,000.
- Edward L. Diefenthal, whose contributions exceeded the limit by \$3,000.
- Carolyn Gilmore, whose contributions exceeded the limit by \$3,000.
- M. Maitland Deland, whose contributions exceeded the limit by \$3,000.
- We are not recommending that the Commission take action against the individual
- 15 contributors whose excessive contributions totaled less than \$3,000.
- Therefore, this Office recommends that the Commission find reason to believe that
- 17 Sammy Joe Russo, Julie N. Murphy, John E. Soileau, Edward L. Diefenthal, Carolyn Gilmore,
- and M. Maitland Deland violated 2 U.S.C. § 441a(a)(1)(A).

In evaluating the excessive contributions Audit staff applied the "curability" regulations at 11 C.F.R. §§ 110.1(b)(5) and 110.1(k).

The names of the individual contributors and the amounts of their contributions were not included in the Audit Referral or the Final Audit Report. That information was contained in the Audit staff's work papers.

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D. Political Committees That Made Excessive Contributions

- 2 Thirty-eight political committees apparently made excessive contributions to the
- 3 Committee. In order to focus the case and the Commission's resources on the most egregious
- 4 conduct, this Office recommends that the Commission exercise its prosecutorial discretion to
- 5 pursue only the eight political committees identified below, each of which contributed more than
- 6 twice the per election contribution limit. 12
- 7 The Republican Jewish Coalition-Political Action Committee, whose contributions 8 • exceeded the limit by \$10,000.
- Senate Majority Fund, whose contributions exceeded the limit by \$7,000.
- The Bluegrass Committee, whose contributions exceeded the limit by \$5,000.
- Good Government for America PAC, whose contributions exceeded the limit by \$5,000.
- America's Foundation fka Fight PAC, whose contributions exceeded the limit by \$5,000.
- Defend America PAC, whose contributions exceeded the limit by \$5,000.
- Republican Majority Fund, whose contributions exceeded the limit by \$5,000.
- Volunteer PAC, whose contributions exceeded the limit by \$5,000.
 - We are not recommending that the Commission take action against the 30 political committees who did not contribute more than twice the per election contribution limit.
- Therefore, this Office recommends that the Commission find reason to believe that the
 Republican Jewish Coalition-Political Action Committee and Matthew Brooks, in his official
 capacity as treasurer; Senate Majority Fund and Ashley Ragan, in her official capacity as
- 21 treasurer, the Bluegrass Committee and Larry Steinberg, in his official capacity as treasurer,

The names of the political committee contributors and the amounts of their contributions were not included in the Audit Referral or the Final Audit Report. That information was contained in the Audit staff's work papers.

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- 1 Good Government for America PAC and Melinda Anderson, in her official capacity as treasurer;
- 2 America's Foundation fka Fight PAC and Barbara Bonfiglio, in her official capacity as treasurer;
- 3 Defend America PAC and John Lloyd, in his official capacity as treasurer; Republican Majority
- 4 Fund and Barbara Bonfiglio, in her official capacity as treasurer; and Volunteer PAC and Dawn
- 5 Perkerson, in her official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

E. <u>Partnerships That Made Excessive Contributions</u>

- Nine partnerships and LLCs that elected to be treated as partnerships by the Internal
 Revenue Service made excessive contributions to the Committee. In order to focus the case and
 the Commission's resources on the most egregious conduct, this Office recommends that the
 Commission exercise its prosecutorial discretion to pursue only the three partnerships identified
 below, each of which contributed more than twice the per election contribution limit and whose
- Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P., whose contributions exceeded the limit by \$5,000.

The Carthage Partners, L.C., whose contributions exceeded the limit by \$9,000.

• Oncologics, whose contributions exceeded the limit by \$3,000.

contributions were \$3,000 or more over the limit.

- We are not recommending that the Commission take action against the six partnerships whose excessive contributions totaled less than \$3,000.
- Therefore, this Office recommends that the Commission find reason to believe that The
 Carthage Partners, L.C., Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P., and Oncologics
 violated 2 U.S.C. § 441a(a)(1)(A).

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F. Suzanne Haik Terrell and First Bank and Trust

Suzanne Haik Terrell ("the Candidate") obtained a loan in the amount of \$101,000 from First Bank and Trust ("the Bank") on August 2, 2002. On August 5, 2002, the Candidate loaned the Committee \$100,000 from the proceeds of the loan. The Committee repaid the loan directly to the Bank on December 16, 2002. See Attachment 1 at 13. Based on information in the Final Audit Report, it appears that the loan did not meet the Commission's "assurance of repayment" standard. Id. at 14. Consequently, the loan was a prohibited contribution by the Bank, which the Candidate received on behalf of the Committee. 2 U.S.C. § 432(e)(2). Therefore, this Office recommends that the Commission find reason to believe that Suzanne Haik Terrell and First Bank and Trust violated 2 U.S.C. § 441b(a).

III. PROPOSED CONCILIATION

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 IV.

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RECOMMENDATIONS

- 2. Find reason to believe that Terrell for Senate and Justin Schmidt, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a), 2 U.S.C. § 441a(f), 2 U.S.C. § 434(b) and 11 C.F.R. §§ 102.17(c)(8)(i)(B) and 104.3(a) and (b), and 2 U.S.C. § 434(a)(6) and 11 C.F.R. § 104.5(f),
- Find reason to believe that former assistant treasurer Susan Arceneaux, in her personal capacity, violated 2 U.S.C. § 441b(a), 2 U.S.C. § 441a(f), 2 U.S.C. § 434(b) and 11 C.F.R. §§ 102.17(c)(8)(i)(B) and 104.3(a) and (b), and 2 U.S.C. § 434(a)(6) and 11 C.F.R. 104.5(f),

1 2	4.	Find reason to believe that Otto Candies, L.L.C. violated 2 U.S.C. § 441b(a),
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5	5.	Find reason to believe that Clean Tank, L.L.C. violated 2 U.S.C. § 441b(a)
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8 9	6.	Find reason to believe that Land-Glo, L.L.C. violated 2 U.S.C. § 441b(a),
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12 13	7.	Find reason to believe that Sammy Joe Russo violated 2 U.S.C. § 441a(a)(1)(A),
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16	6	Find record to believe that Inlin N. Murchy violated 2 IV C. 8 441a/a/VIVA)
17 18	8.	Find reason to believe that Julie N. Murphy violated 2 U.S.C. § 441a(a)(1)(A),
19 20		
21 22	9.	Find reason to believe that John E. Soileau violated 2 U.S.C. § 441a(a)(1)(A),
23 24		
25 26	10.	Find reason to believe that Edward L. Diefenthal violated 2 U.S.C. § 441a(a)(1)(A),
27 28		3 TTZW(6)(Z)(TS);
29	11.	Find reason to believe that Carolyn Gilmore violated 2 U.S.C. § 441a(a)(1)(A),
30 31		
32 33	12.	Find reason to believe that M. Maitland Deland violated 2 U.S.C.
34 35		§ 441a(a)(1)(A).
36 37	13.	Find reason to believe that Republican Jewish Coalition-Political Action
38 39		Committee and Matthew Brooks, in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A)
40		Z O.S.C. § TTIMENZANI
41 42	14.	Find reason to believe that Senate Majority Fund and Ashley Ragan, in her
43 44		official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A),
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1 2 3	15.	Find reason to believe that Bluegrass Committee and Larry Steinberg, in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A),
4 5 6 7	16.	Find reason to believe that Good Government for America PAC and Melinda Anderson, in her official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A),
8 9		Anderson, in her official capacity as measurer, violated 2 0.3.C. 9 441a(a)(2)(A),
10 11	17.	Find reason to believe that America's Foundation fka Fight PAC and Barbara
12 13 14		Bonfiglio, in her official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A),
15 16 17 18	18.	Find reason to believe that Defend America PAC and John Lloyd, in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A),
19 20		
21 22 23 24	19.	Find reason to believe that Republican Majority Fund and Barbara Bonfiglio, in her official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A),
25 26 27 28 29	20.	Find reason to believe that Volunteer PAC and Dawn Perkerson, in her official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A),
30 31 32 33	21.	Find reason to believe that The Carthage Partners, L.C. violated 2 U.S.C. § 441a(a)(1)(A),
34 35 36 37 38	22.	Find reason to believe that Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P. violated 2 U.S.C. § 441a(a)(1)(A),
39 40 41 42	23.	Find reason to believe that Oncologics violated 2 U.S.C. § 441a(a)(1)(A),
43 44 45	24.	Find reason to believe that Suzanne Haik Terrell violated 2 U.S.C. § 441b(a),
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- 25. Find reason to believe that First Bank and Trust violated 2 U.S.C. § 441b(a)
- 26. Approve as Factual and Legal Analyses for Terrell for Senate and Justin Schmidt; Otto Candies, L.L.C.; Clean Tank, L.L.C.; Land-Glo, L.L.C.; Sammy Joe Russo; Julie N. Murphy; John E. Soileau; Edward L. Diefenthal; Carolyn Gilmore; M. Maitland Deland; Republican Jewish Coalition-Political Action Committee and Matthew Brooks; Senate Majority Fund and Ashley Ragan; Bluegrass Committee and Larry Steinberg; Good Government for America PAC and Melinda Anderson; America's Foundation fka Fight PAC and Barbara Bonfiglio; Defend America PAC and John Lloyd; Republican Majority Fund and Barbara Bonfiglio; Volunteer PAC and Dawn Perkerson; The Carthage Partners, L.C.; Chaffee, McCall, Phillips, Toler & Sarpy, L.L.P.; Oncologics; Suzanne Haik Terrell; and First Bank and Trust, the Final Audit Report on Terrell for Senate, approved by the Commission on August 4, 2004;
- 27. Approve the attached Factual and Legal Analysis for Susan Arceneaux;
- 28. Approve the appropriate letters.²⁰

Lawrence H. Norton General Counsel

Rhonda J. Vosdingh Associate General Counsel for Enforcement

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Cynthia E. Tompkins
Assistant General Counsel

With respect to Otto Candies, L.L.C.; Clean Tank, L.L.C.; Land-Glo, L.L.C.; Sammy Joe Russo; Julie N. Murphy; John E. Soileau; Edward L. Diefenthal; Carolyn Gilmore; M. Maitland Deland; Republican Jewish Coalition-Political Action Committee and Matthew Brooks; Senate Majority Fund and Ashley Ragan; Bluegrass Committee and Larry Steinberg; Good Government for America PAC and Melinda Anderson; America's Foundation fka Fight PAC and Barbara Bonfiglio; Defend America PAC and John Lloyd; Republican Majority Fund and Barbara Bonfiglio; Volunteer PAC and Dawn Perkerson; The Carthage Partners, L.C.; Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P.; and Oncologics, the respondent's contribution record will be included in the reason to believe notification letter.

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Jack A. Gould

Jack A. Gould

Attorney

Attachments:

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          Final Audit Report
      1.
          Report of Audit Division - Review of Committee's Amended Reports
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27. Factual and Legal Analysis for Susan Arceneaux